

AMENDED IN ASSEMBLY APRIL 20, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

## ASSEMBLY BILL

**No. 2400**

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**Introduced by Assembly Member Pleseia Benoit**

February 23, 2006

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~~An act to amend Sections 139.31, 4616, 5307.1, and 5318 of, and to add Section 4610.5 to, the Labor Code, relating to workers' compensation. An act to amend Sections 717, 922.1, 922.2, 922.3, 922.4, 922.5, 922.6, 922.7, and 1011 of, and to repeal Section 922.8 of, the Insurance Code, relating to reinsurance.~~

### LEGISLATIVE COUNSEL'S DIGEST

AB 2400, as amended, ~~Pleseia Benoit. Workers' compensation. Reinsurance.~~

*Existing law provides that a ceding insurer is allowed credit for reinsurance as either an asset or a deduction from liability under specified conditions if the reinsurance contract contains certain provisions.*

*This bill would make several changes in the law of reinsurance. It would set forth a declaration of intent promoting consistent regulation of reinsurance throughout the country and amending several provisions of existing law to conform it with the National Association of Insurance Commissioner's Credit for Reinsurance Model Law.*

*The bill would further define when a reinsurance agreement is "materially deficient" for the purpose of evaluating an insurer's application for a certificate of authority. It would revise requirements for the reinsurance contract, and would prohibit the Insurance Commissioner from requiring specific provisions. It would revise the qualification requirements for reinsurers, including required trust*

*provisions. It would repeal provisions that specifically authorize the commissioner to impose related requirements. It would clarify the commissioner's authority to regulate assumption reinsurance transactions.*

~~(1) Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of employment.~~

~~Existing law requires every employer to establish a utilization review process, either directly or through its insurer or entity with which an employer or insurer contracts for these services, including procedures for preauthorization of medical services.~~

~~This bill would also prohibit nonemergency outpatient surgery, as specified, from being performed unless the treating physician or the facility has received a service preauthorization from the insurer or self-insured employer.~~

~~(2) Existing law provides that it is unlawful for a physician to refer a person for medical goods or services, including outpatient surgery services, whether for treatment or medical-legal purposes, if the physician or his or her immediate family has a financial interest with the person or in the entity that receives the referral.~~

~~Existing law also provides for an exemption from this prohibition for outpatient surgical centers when the referring physician obtains a service preauthorization from the insurer or self-insured employer after disclosure of the financial relationship.~~

~~This bill would require the insurer or self-insured employer to process a service preauthorization request in accordance with provisions relating to utilization review.~~

~~(3) Existing law authorizes an insurer or employer to establish or modify a medical provider network for the provision of medical treatment to injured employees.~~

~~This bill would prohibit a medical provider network from including an ambulatory surgical center.~~

~~(4) Existing law requires the administrative director to adopt and revise periodically an official medical fee schedule for services, drugs, fees, and goods. Existing law prohibits the maximum facility fee for services performed in an ambulatory surgical center or in a hospital outpatient department from exceeding 120% of the fee paid by Medicare for the same services performed in a hospital outpatient department.~~

~~This bill would establish reimbursement methodologies for surgical implants and accessories or supplies directly used with an implant provided in connection with an ambulatory surgical center or hospital outpatient department, and would make other technical, nonsubstantive changes.~~

~~(5) Existing law requires that implantable medical devices, hardware, and instrumentation for certain Diagnostic Related Groups (DRGs) be separately reimbursed in accordance with a prescribed formula.~~

~~This bill would require that comparable procedures performed on an outpatient basis be similarly reimbursed in accordance with this formula.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 717 of the Insurance Code is amended  
2     to read:  
3     717. (a) Before granting a certificate of authority or amended  
4     certificate of authority to any applicant, the commissioner shall  
5     consider the qualifications of said applicant in respect to the  
6     following subjects: ~~(a)~~ (1) capital and surplus; ~~(b)~~ (2) lawfulness  
7     and quality of investments; ~~(c)~~ (3) financial stability; ~~(d)~~ (4)  
8     reinsurance arrangements; ~~(e)~~ (5) competency, character, and  
9     integrity of management; ~~(f)~~ (6) ownership and control of issued  
10    and outstanding shares in the case of a capital stock insurer; ~~(g)~~  
11    (7) whether claims under policies are promptly and fairly  
12    adjusted and are promptly and fully paid in accordance with law  
13    and the terms of policies; ~~(h)~~ (8) fairness and honesty of methods  
14    of doing business; ~~(i)~~ (9) method by which said applicant was  
15    promoted if any of its promoters remain as stockholders or in  
16    management; and ~~(j)~~ (10) hazard to policyholders or creditors.  
17    (b) *For the purposes of this section, an applicant's*  
18    *reinsurance arrangement shall be considered materially deficient*  
19    *only where the commissioner examines the applicant's*  
20    *reinsurance agreements and finds that they do not meet the*  
21    *requirements of paragraphs (1) and (2).*  
22    (1) *The applicant's reinsurance agreements meet any of the*  
23    *following:*

1 (A) *The requirements of Sections 922.1 to 922.9, inclusive, or*  
2 *where applicable, the requirements of the credit for reinsurance*  
3 *law of the state of domicile of a foreign insurer applicant.*

4 (B) *The standards applicable to reinsurance agreements*  
5 *subject to Sections 1215.1 to 1215.15, inclusive, or where*  
6 *applicable, the requirements of the insurance holding company*  
7 *system law of the state of domicile of a foreign insurer applicant.*

8 (C) *The required terms for reinsurance agreements*  
9 *established in the Accounting Practices & Procedures Manual*  
10 *adopted by the National Association of Insurance*  
11 *Commissioners.*

12 (2) *A disallowance of credit for the applicant's reinsurance*  
13 *agreements that fail to meet the requirements of paragraph (1)*  
14 *would render the applicant's financial condition hazardous to*  
15 *the public.*

16 (c) *Upon consideration of all relevant qualifications the*  
17 *commissioner shall issue a certificate of authority to such*  
18 *applicant, unless the commissioner shall have made a finding, or*  
19 *findings, that the applicant is materially deficient in respect to*  
20 *one or more of the items as outlined in (a) through (j), above set*  
21 *forth in subdivision (a).*

22 SEC. 2. *Section 922.1 of the Insurance Code is amended to*  
23 *read:*

24 922.1. *The Legislature declares its intent that:*

25 (a) *The following is in the best interest of California domestic*  
26 *insureds, claimants, ceding insurers, assuming insurers and the*  
27 *public generally; given the size of the California insurance*  
28 *market and the great concentration of risk and natural disaster*  
29 *perils, California's insurance market is highly dependent upon*  
30 *reinsurance. Reinsurance is a global business conducted by*  
31 *sophisticated insurers and reinsurers. Regulation of reinsurance*  
32 *arrangements must be consistent throughout the United States to*  
33 *enhance the availability of reinsurance in California. If this does*  
34 *not occur, California domestic insurers and their customers will*  
35 *be adversely impacted. Adherence to the 1996 National*  
36 *Association of Insurance Commissioners Credit for Reinsurance*  
37 *Model Law is the best way to insure consistent regulation. The*  
38 *Model Law: (1) recognizes the need for consistency and*  
39 *regulation by other states' insurance departments of their*  
40 *domestic insurance companies, and (2) grants the ceding*

insurer's United States domestic regulator the exclusive regulatory authority to determine the reinsurance credit permitted for such insurer, assuming the other state has a substantially similar credit for reinsurance law. Further, the availability of reinsurance and a regulatory scheme that does not infringe upon insurers' and reinsurers' statutory, contractual or common law rights is in the best interests of Californians. The authority granted to the commissioner shall be construed consistently with the National Association of Insurance Commissioners Accounting Practices and Procedures Manual, as adopted in Section 923.

(a)

(b) In some instances, it is appropriate for the protection of insureds, insurers, and the public generally, that assuming insurers be required to provide security for the payment of their reinsurance obligations.

(b)

(c) Where such security is provided, and upon the insolvency of the assuming insurer or upon the initiation of receivership proceedings against it, the commissioner shall have the authority to determine whether it is in the best interest of insureds, claimants, and insurers to retain such security in the United States, to allow the filing of claims against the assuming insurer in the United States, and to have such claims valued in a United States proceeding subject to United States laws.

(e)

(d) In furtherance of the protection of insureds, insurers, and the public generally, the Legislature hereby states that these matters are fundamental to the business of insurance and hereby exercises its powers and privileges available pursuant to Sections 1011 and 1012 of Title 15 of the United States Code.

SEC. 3. Section 922.2 of the Insurance Code is amended to read:

922.2. (a) Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a deduction from liability in accordance with Sections 922.4 and 922.5 only if the reinsurance contract contains provisions that provide, in substance, as follows:

1 (1) The reinsurer shall indemnify the ceding insurer for ~~any~~  
2 ~~portion of~~ the risk it has assumed according to the terms and  
3 conditions contained in the reinsurance contract.

4 (2) In the event of insolvency and the appointment of a  
5 conservator, liquidator, or statutory successor of the ceding  
6 company, ~~the portion of~~ any risk or obligation assumed by the  
7 reinsurer shall be payable to the conservator, liquidator, or  
8 statutory successor on the basis of claims allowed against the  
9 insolvent company by any court of competent jurisdiction ~~or by~~  
10 ~~any conservator, liquidator, or statutory successor of the company~~  
11 ~~having authority to allow such claims~~, without diminution  
12 because of that insolvency, or because the conservator,  
13 liquidator, or statutory successor has failed to pay all or a portion  
14 of any claims. Payments by the reinsurer as set forth in this  
15 subdivision shall be made directly to the ceding insurer or to its  
16 conservator, liquidator, or statutory successor, except where the  
17 contract of insurance or reinsurance specifically provides another  
18 payee of such reinsurance in the event of the insolvency of the  
19 ceding insurer.

20 The reinsurance contract may provide that the conservator,  
21 liquidator, or statutory successor of a ceding insurer shall give  
22 written notice of the pendency of a claim against the ceding  
23 insurer indicating the policy or bond reinsured, within a  
24 reasonable time after such claim is filed and the reinsurer may  
25 interpose, at its own expense, in the proceeding where such claim  
26 is to be adjudicated, any defense or defenses which it may deem  
27 available to the ceding insurer or its conservator, liquidator, or  
28 statutory successor. The expense thus incurred by the reinsurer  
29 shall be payable subject to court approval out of the estate of the  
30 insolvent ceding insurer as part of the expense of conservation or  
31 liquidation to the extent of a proportionate share of the benefit  
32 which may accrue to the ceding insurer in conservation or  
33 liquidation, solely as a result of the defense undertaken by the  
34 reinsurer.

35 (b) Payment pursuant to a reinsurance contract shall be made  
36 ~~within a reasonable time with reasonable provision for~~  
37 ~~verification in accordance with the terms of the reinsurance~~  
38 ~~agreement. However, in no event shall the payments be beyond~~  
39 the period required by the National Association of Insurance

Commissioners (NAIC) Accounting Practices and Procedures Manual.

(c) The original insured or policyholder shall not have any rights against the reinsurer which are not specifically set forth in the contract of reinsurance, or in a specific agreement between the reinsurer and the original insured or policyholder.

(d) The commissioner shall not require that specific terms or provisions be included in a reinsurance agreement as a condition for the allowance of credit for reinsurance.

SEC. 4. Section 922.3 of the Insurance Code is amended to read:

922.3. Notwithstanding any other provision of law, credit for reinsurance, as either an asset or a ~~deduction~~ reduction, shall not be allowed in any accounting or financial statement of ~~the a domestic ceding insurer in respect to any so-called reinsurance contract~~ unless, in ~~such~~ the reinsurance contract, the reinsurer undertakes to indemnify the ceding insurer, not only in form but in fact, against ~~all or a part of the~~ loss or liability arising out of the original insurance.

SEC. 5. Section 922.4 of the Insurance Code is amended to read:

922.4. Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a ~~deduction~~ reduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of subdivision (a), (b), (c), ~~or~~ (d) or (e). Credit shall be allowed under subdivision (a) ~~or~~, (b) or (c) only for cessions of those kinds or classes of business that the assuming insurer is licensed or otherwise permitted to write or assume in its state of domicile or, in the case of a United States branch of an alien assuming insurer, in the state through which it is entered and licensed to transact insurance or reinsurance. If meeting the requirements of subdivision ~~(e)~~ (d), the requirements of subdivision ~~(e)~~ (g) shall also be met.

(a) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is licensed to transact insurance or reinsurance in this state ~~unless the assuming insurer is the subject of a regulatory order or regulatory oversight by any state in which it is licensed based upon a commissioner's determination that the assuming insurer is in a hazardous financial condition.~~

(b) (1) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is accredited as a reinsurer in this state ~~unless the assuming insurer is the subject of a regulatory order or regulatory oversight by any state in which it is licensed based upon a commissioner's determination that the assuming insurer is in a hazardous financial condition.~~ An accredited reinsurer is one that does all of the following:

(A) Files with the commissioner evidence of its submission to this state's jurisdiction.

(B) Submits to this state's authority to examine its books and records.

(C) Designates the commissioner or a designated attorney in this state as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding insurer.

(D) Is licensed to transact insurance or reinsurance in at least one state, or in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state.

(E) Files annually with the commissioner a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement and other financial information requested by the commissioner.

~~(F) Submits a statement, signed and verified by an officer of the assuming insurer to be true and correct, that discloses whether the assuming insurer or any affiliated person who owns or has a controlling interest in the assuming insurer is currently known to be the subject of any of the following:~~

~~(i) Any order or proceeding regarding conservation, liquidation, or receivership.~~

~~(ii) Any order or proceeding regarding the revocation or suspension of a license or accreditation to transact insurance or reinsurance in any jurisdiction.~~

~~(iii) Any order or proceeding brought by an insurance regulator in any jurisdiction seeking to restrict or stop the assuming insurer from transacting insurance or reinsurance based upon a hazardous financial condition.~~

~~The assuming insurer shall provide the commissioner with copies of any orders or other documents initiating proceedings subject to disclosure under this paragraph. The statement shall~~



1 ~~affirm that no actions, proceedings, or orders subject to this~~  
2 ~~subparagraph are outstanding against the assuming insurer or any~~  
3 ~~affiliated person who owns or has a controlling interest in the~~  
4 ~~assuming insurer, except as disclosed in the statement.~~

5 ~~(G)~~

6 (F) Maintains a surplus as regards policyholders in an amount  
7 that is not less than twenty million dollars (\$20,000,000) and  
8 whose accreditation has not been denied by the commissioner  
9 within 90 days of its submission or maintains a surplus as regards  
10 policyholders in an amount less than twenty million dollars  
11 (\$20,000,000) and whose accreditation has been approved by the  
12 commissioner.

13 (2) The commissioner may deny or revoke an assuming  
14 insurer's accreditation if the assuming insurer does not meet all  
15 of the standards required of an accredited reinsurer, ~~or if its~~  
16 ~~accreditation would be hazardous to the policyholders of this~~  
17 ~~state.~~ In determining whether to deny or revoke accreditation, the  
18 commissioner may consider the qualifications of the assuming  
19 insurer with respect to all the following subjects:

20 (A) Its financial stability.

21 (B) The lawfulness and quality of its investments.

22 (C) The competency, character, and integrity of its  
23 management.

24 (D) The competency, character, and integrity of persons who  
25 own or have a controlling interest in the assuming insurer.

26 (E) Whether claims under its contracts are promptly and fairly  
27 adjusted and are promptly and fully paid in accordance with the  
28 law and the terms of the contracts.

29 (3) Credit shall not be allowed a domestic ceding insurer if the  
30 assuming insurer's accreditation has been revoked by the  
31 commissioner after notice and hearing.

32 (4) The actual costs and expenses incurred by the department  
33 to review a reinsurer's request for accreditation and subsequent  
34 reviews shall be charged to and collected from the requesting  
35 reinsurer. If the reinsurer fails to pay the actual costs and  
36 expenses promptly when due, the commissioner may refuse to  
37 accredit the reinsurer or may revoke the reinsurer's accreditation.

38 (c) (1) *Credit shall be allowed when the reinsurance is ceded*  
39 *to an assuming insurer that is domiciled in, or in the case of a*  
40 *United States branch of an alien assuming insurer is entered*

1 *through, a state that employs standards regarding credit for*  
2 *reinsurance substantially similar to those applicable under this*  
3 *statute and the assuming insurer or United States branch of an*  
4 *alien assuming insurer does the following:*

5 *(A) Maintains a surplus as regards policyholders in an*  
6 *amount not less than twenty million dollars (\$20,000,000).*

7 *(B) Submits to the authority of this state to examine its books*  
8 *and records.*

9 *(2) The requirement of subparagraph (A) does not apply to*  
10 *reinsurance ceded and assumed pursuant to pooling*  
11 *arrangements among insurers in the same holding company*  
12 *system.*

13 ~~(e)~~

14 *(d) (1) Credit shall be allowed when the reinsurance is ceded*  
15 *to an assuming insurer that maintains a trust fund in a qualified*  
16 *United States financial institution as defined in subdivision (b) of*  
17 *Section 922.7 for the payment of the valid claims of its United*  
18 *States ceding insurers, their assigns, and successors in interest.*  
19 *To enable the commissioner to determine the sufficiency of the*  
20 *trust fund the assuming insurer shall report annually to the*  
21 *commissioner information substantially the same as that required*  
22 *to be reported on the NAIC Annual Statement form by licensed*  
23 *insurers or any other form required by the NAIC.*

24 *(2) Credit for reinsurance shall not be granted under this*  
25 *subdivision unless the form of the trust and any amendments to*  
26 *the trust have been approved by either:*

27 *(A) The commissioner of the state where the trust is*  
28 *domiciled.*

29 *(B) The commissioner of another state who, pursuant to the*  
30 *terms of the trust instrument, has accepted principal regulatory*  
31 *oversight of the trust.*

32 *The trust and any trust amendments shall also be filed with the*  
33 *commissioner of every state in which the ceding insurer*  
34 *beneficiaries of the trust are domiciled. ~~Notwithstanding the~~*  
35 *foregoing, ~~nothing in this paragraph shall prevent the~~*  
36 *commissioner from disapproving the form of the trust if it is not*  
37 *in compliance with this state's laws and regulations.*

38 *(3) Credit for reinsurance shall not be granted under this*  
39 *subdivision unless the following requirements are met:*

1 (A) The trust instrument shall provide that contested claims  
2 shall be valid, enforceable, and payable out of funds in trust to  
3 the extent remaining unsatisfied 30 days after entry of the final  
4 order of any court of competent jurisdiction in the United States.

5 (B) The trust shall vest legal title to its assets in the trustees of  
6 the trust for the benefit of the grantor's United States ceding  
7 insurers, their assigns, and successors in interest.

8 (C) The trust and the assuming insurer shall be subject to  
9 examination as determined by the commissioner.

10 (D) The trust shall remain in effect for as long as the assuming  
11 insurer, or any member or former member of a group of insurers,  
12 shall have outstanding obligations due under the reinsurance  
13 agreements subject to the trust.

14 (E) No later than February 28 of each year, the trustees of the  
15 trust shall report to the commissioner in writing setting forth the  
16 balance of the trust and listing the trust's investments at the  
17 preceding year end and shall certify the date of termination of the  
18 trust, if so planned, or certify that the trust shall not expire within  
19 the next 18 months.

20 (4) The following requirements apply to the following  
21 categories of assuming insurer:

22 (A) The trust fund for a single assuming insurer shall consist  
23 of funds in trust in an amount not less than the assuming  
24 insurer's liabilities attributable to reinsurance ceded by United  
25 States domiciled ceding insurers, and, in addition, the assuming  
26 insurer shall maintain a trustee surplus of not less than twenty  
27 million dollars (\$20,000,000).

28 (B) In the case of a group including incorporated and  
29 individual unincorporated underwriters:

30 (i) For reinsurance ceded under reinsurance agreements with  
31 an inception, amendment, or renewal date on or after August 1,  
32 1995, the trust shall consist of a trustee account in an amount  
33 not less than the group's several liabilities attributable to business  
34 ceded by United States domiciled ceding insurers to any member  
35 of the group.

36 (ii) For reinsurance ceded under reinsurance agreements with  
37 an inception date on or before July 31, 1995, and not amended or  
38 renewed after that date, notwithstanding the other provisions of  
39 this article, the trust shall consist of a trustee account in an  
40 amount not less than the group's several insurance and

1 reinsurance liabilities attributable to business written in the  
2 United States.

3 (iii) In addition to the trusts required in clauses (i) and (ii), the  
4 group shall maintain in trust a trustee surplus of which one  
5 hundred million dollars (\$100,000,000) shall be held jointly for  
6 the benefit of the United States domiciled ceding insurers of any  
7 member of the group for all years of account.

8 (iv) The incorporated members of the group shall not be  
9 engaged in any business other than underwriting as a member of  
10 the group and shall be subject to the same level of regulation and  
11 solvency control by the group's domiciliary regulator as are the  
12 unincorporated members.

13 (v) The group shall, within 90 days after its financial  
14 statements are due to be filed with the group's domiciliary  
15 regulator, provide to the commissioner an annual certification by  
16 the group's domiciliary regulator of the solvency of each  
17 underwriter member; or if a certification is unavailable, financial  
18 statements prepared by independent public accountants of each  
19 underwriter member of the group.

20 ~~(C) In the case of a group of incorporated insurers under~~  
21 ~~common administration, the group shall meet all of the following~~  
22 ~~requirements:~~

23 ~~(i) Have continuously transacted an insurance business outside~~  
24 ~~the United States for at least three years immediately prior to~~  
25 ~~making application for accreditation and be in good standing~~  
26 ~~with its domiciliary regulator.~~

27 ~~(ii) Demonstrate that individual insurer members maintain~~  
28 ~~standards and financial conditions reasonably comparable to~~  
29 ~~admitted insurers.~~

30 ~~(iii) Maintain aggregate policyholders' surplus of at least ten~~  
31 ~~billion dollars (\$10,000,000,000).~~

32 ~~(iv) Maintain a trust fund in an amount not less than the~~  
33 ~~group's several liabilities attributable to business ceded by~~  
34 ~~United States domiciled ceding insurers to any member of the~~  
35 ~~group pursuant to reinsurance contracts issued in the name of~~  
36 ~~such group.~~

37 ~~(v) In addition, maintain a joint trustee surplus of which one~~  
38 ~~hundred million dollars (\$100,000,000) shall be held jointly for~~  
39 ~~the benefit of United States ceding insurers of any member of the~~  
40 ~~group as additional security for these liabilities. The~~

1 commissioner shall have the authority to require additional  
2 amounts to be held in the trust as a condition for initial or  
3 continued accreditation if the commissioner determines that these  
4 additional amounts are required for the protection of ceding  
5 insurers.

6 (vi) ~~Within 90 days after its financial statements are due to be~~  
7 ~~filed with the group's domiciliary regulator, make available to~~  
8 ~~the commissioner an annual certification of each underwriter~~  
9 ~~member's solvency by the member's domiciliary regulator, and~~  
10 ~~financial statements for each underwriter member of the group~~  
11 ~~prepared by its independent public accountant.~~

12 (5) The actual costs and expenses incurred by the department  
13 to review the trusts and subsequent amendments established or  
14 maintained pursuant to this subdivision shall be charged to and  
15 collected from the requesting reinsurer or group. If the reinsurer  
16 or group fails to pay the actual costs and expenses promptly  
17 when due, the commissioner may refuse to allow credit for  
18 reinsurance ceded to that reinsurer or group.

19 (d)

20 (e) Credit shall be allowed when the reinsurance ceded to an  
21 assuming insurer not meeting the requirements of subdivision (a),  
22 (b), or (c), but only as to the insurance of risks located in  
23 jurisdictions where the reinsurance is required by applicable law  
24 or regulation of that jurisdiction.

25 (e)

26 (f) If the assuming insurer is not licensed or accredited to  
27 transact insurance or reinsurance in this state, the credit permitted  
28 by subdivision (c) shall not be allowed unless the assuming  
29 insurer does both of the following:

30 (1) ~~Submits~~ *In the event of the failure of the assuming insurer*  
31 *to perform its obligations under the terms of the reinsurance*  
32 *agreement, the assuming insurer, at the request of the ceding*  
33 *insurer submits* to the jurisdiction of any court of competent  
34 jurisdiction in any state of the United States, complies with all  
35 requirements necessary to give such court jurisdiction, and abides  
36 by the final decision of the court or of any appellate court in the  
37 event of an appeal.

38 (2) Designates the commissioner or a designated attorney in  
39 this state as its true and lawful attorney upon whom may be

1 served any lawful process in any action, suit, or proceeding  
2 instituted by or on behalf of the ceding insurer.

3 This subdivision is not intended to conflict with or override the  
4 obligation of the parties to a reinsurance agreement to arbitrate  
5 their disputes, if this obligation is created in the agreement.

6 (f)

7 (g) If the assuming insurer does not meet the requirements of  
8 subdivision (a), (b), or (d), the credit permitted by subdivision (c)  
9 shall not be allowed unless the assuming insurer agrees in the  
10 trust agreement that notwithstanding any other provision in the  
11 trust instrument, if the trust fund is inadequate because it contains  
12 an amount less than the amount required by paragraph (4) of  
13 subdivision (c), or if the grantor of the trust has been declared  
14 insolvent or placed into receivership, rehabilitation, liquidation,  
15 or similar proceedings under the laws of its state or country of  
16 domicile:

17 (1) The trustee shall comply with an order of the  
18 commissioner with regulatory oversight over the trust or with an  
19 order of a court of competent jurisdiction directing the trustee to  
20 transfer to the commissioner with regulatory oversight all of the  
21 assets of the trust fund.

22 (2) The assets shall be distributed by, and insurance claims  
23 shall be filed with and valued by, the commissioner with  
24 regulatory oversight in accordance with the laws of the state in  
25 which the trust is domiciled that are applicable to the liquidation  
26 of domestic insurance companies.

27 (3) If the commissioner with regulatory oversight determines  
28 that the assets of the trust fund or any part thereof are not  
29 necessary to satisfy the claims of the United States ceding  
30 insurers of the grantor of the trust, the assets or part thereof shall  
31 be returned by the commissioner with regulatory oversight to the  
32 trustee for distribution in accordance with the trust agreement.

33 (4) The grantor hereby waives any right otherwise available to  
34 it under United States law that is inconsistent with this provision.

35 *SEC. 6. Section 922.5 of the Insurance Code is amended to*  
36 *read:*

37 922.5. (a) An asset or a ~~deduction~~ reduction from liability for  
38 reinsurance ceded by a domestic insurer to an assuming insurer  
39 not meeting the requirements of Section 922.4 shall be allowed in

1 an amount not exceeding the liabilities carried by the ceding  
2 insurer to the extent of either of the following:

3 (1) The asset or ~~deduction~~ *reduction* is not greater than the  
4 amount of funds held by the ceding insurer under a reinsurance  
5 contract with that assuming insurer as security for the payment of  
6 obligations thereunder and such funds are held in the United  
7 States under the exclusive control of the ceding insurer.

8 (2) The asset or ~~deduction~~ *reduction* is not greater than the  
9 amount of funds held in a trust, satisfactory to the commissioner,  
10 on behalf of the ceding insurer under a reinsurance contract with  
11 such assuming insurer as security for the payment of obligations  
12 thereunder and is held in a qualified United States financial  
13 institution, as defined in subdivision (b) of Section 922.7, subject  
14 to withdrawal solely by the ceding insurer.

15 The security under this subdivision may be in the form of cash  
16 or securities authorized as general investments under Article 3  
17 (commencing with Section 1170) of Chapter 2, or securities  
18 listed by the Securities Valuation Office of the NAIC, qualifying  
19 as admitted assets under this code and with liquidity meeting the  
20 requirements of Section 706.5.

21 (b) An asset or a ~~deduction~~ *reduction* from liability for  
22 reinsurance ceded by a domestic insurer to an assuming insurer  
23 not meeting the requirements of Section 922.4 shall be allowed in  
24 an amount not exceeding the liabilities carried by the ceding  
25 insurer to the extent that security is provided in the form of  
26 letters of credit, satisfactory to the commissioner, which shall be:

27 (1) Clean, irrevocable, unconditional letters of credit, issued or  
28 confirmed by a qualified United States financial institution, as  
29 defined in subdivision (a) of Section 922.7, effective no later  
30 than December 31st in respect of the year for which filing is  
31 being made, and in the possession of the ceding insurer on or  
32 before the filing date of its annual statement.

33 (2) Letters of credit meeting applicable standards of issuer  
34 acceptability as of the dates of their issuance or confirmation and  
35 shall, notwithstanding the issuing or confirming institution's  
36 subsequent failure to meet applicable standards of issuer  
37 acceptability, continue to be acceptable as security until their  
38 expiration, extension, renewal, modification, or amendment,  
39 whichever first occurs.

1     *SEC. 7. Section 922.6 of the Insurance Code is amended to*  
2     *read:*

3     ~~922.6. (a) Unless credit~~ *Credit for reinsurance or deduction*  
4     ~~*reduction from liability is disallowed pursuant to Section 922.3*~~  
5     ~~*or 923, credit for reinsurance or deduction from liability shall be*~~  
6     *allowed a foreign ceding insurer to the extent credit has been*  
7     *allowed by the ceding insurer's state of domicile if either:*

8     (1) *The state of domicile is accredited by the NAIC.*

9     ~~(2) Credit or deduction from liability would be allowed under~~  
10    ~~*this statute if the foreign ceding insurer were domiciled in this*~~  
11    ~~*state. The state of domicile has enacted a credit for reinsurance*~~  
12    ~~*law that is substantially similar to that in effect in California.*~~

13    ~~(b) Notwithstanding subdivision (a), credit for reinsurance or~~  
14    ~~*deduction from liability may be disallowed upon a finding by the*~~  
15    ~~*commissioner that either the condition of the reinsurer, or the*~~  
16    ~~*collateral or other security provided by the reinsurer, does not*~~  
17    ~~*satisfy the credit for reinsurance requirements applicable to*~~  
18    ~~*ceding insurers domiciled in this state.*~~

19    *SEC. 8. Section 922.7 of the Insurance Code is amended to*  
20    *read:*

21    ~~922.7. (a) For purposes of subdivision (b) of Section 922.5, a~~  
22    ~~*"qualified United States financial institution" means an*~~  
23    ~~*institution that complies with all of the following:*~~

24    (1) *Is organized or in the case of a United States office of a*  
25    *foreign banking organization, licensed, under the laws of the*  
26    *United States or any state thereof.*

27    (2) *Is regulated, supervised, and examined by United States*  
28    *federal or state authorities having regulatory authority over banks*  
29    *and trust companies.*

30    (3) *Has been determined by the commissioner, or, in the*  
31    ~~*discretion of the commissioner,*~~ *the Securities Valuation Office*  
32    *of the NAIC, to meet such standards of financial condition and*  
33    *standing as are considered necessary and appropriate to regulate*  
34    *the quality of financial institutions whose letters of credit will be*  
35    *acceptable to the commissioner.*

36    (b) *A "qualified United States financial institution" means, for*  
37    *purposes of those provisions of this law specifying those*  
38    *institutions that are eligible to act as a fiduciary of a trust, an*  
39    *institution that is both:*



1 (1) Organized, or in the case of a United States branch or  
2 agency office of a foreign banking organization, licensed, under  
3 the laws of the United States or any state thereof and has been  
4 granted authority to operate with fiduciary powers.

5 (2) Regulated, supervised, and examined by federal or state  
6 authorities having regulatory authority over banks and trust  
7 companies.

8 *SEC. 9. Section 922.8 of the Insurance Code is repealed.*

9 ~~922.8. (a) The commissioner, after notice, comment period,~~  
10 ~~and a hearing if requested by more than 10 affected insurers, may~~  
11 ~~issue a bulletin setting forth reasonable requirements for the~~  
12 ~~allowance of reinsurance as an asset or deduction from liability~~  
13 ~~consistent with Sections 922.4 to 922.6, inclusive, including the~~  
14 ~~following:~~

15 ~~(1) Filing requirements for an accredited assuming insurer.~~

16 ~~(2) Accreditation requirements for an assuming insurer with~~  
17 ~~less than a twenty million dollars (\$20,000,000) surplus as~~  
18 ~~regards policyholders.~~

19 ~~(3) The definition of "liabilities" as used in Sections 922.4 and~~  
20 ~~922.5.~~

21 ~~(4) Investment guidelines for trust funds established and~~  
22 ~~maintained pursuant to subdivision (c) of Section 922.4.~~

23 ~~(5) Definitions and required or permitted conditions for trust~~  
24 ~~funds established and maintained pursuant to Section 922.5.~~

25 ~~(6) Requirements of letters of credit established and~~  
26 ~~maintained pursuant to Section 922.5.~~

27 ~~(b) On or before January 1, 1998, the commissioner shall~~  
28 ~~notify the Legislature that the bulletin has been promulgated so~~  
29 ~~that the Legislature is able to ensure the commissioner's~~  
30 ~~compliance with the requirements of this subdivision.~~

31 ~~(c) The bulletin authorized by this section shall have the same~~  
32 ~~force and effect, and may be enforced by the commissioner to the~~  
33 ~~same extent and degree, as regulations issued by the~~  
34 ~~commissioner until the time that the commissioner issues~~  
35 ~~additional or amended regulations pursuant to subdivision (d).~~

36 ~~(d) The commissioner shall adopt regulations implementing~~  
37 ~~the provisions of this law, that shall supersede the bulletin~~  
38 ~~authorized by this section, no later than December 31, 2001.~~

39 *SEC. 10. Section 1011 of the Insurance Code is amended to*  
40 *read:*

1011. The superior court of the county in which the principal office of a person described in Section 1010 is located shall, upon the filing by the commissioner of the verified application showing any of the following conditions hereinafter enumerated to exist, issue its order vesting title to all of the assets of that person, wheresoever situated, in the commissioner or his or her successor in office, in his official capacity as such, and direct the commissioner forthwith to take possession of all of its books, records, property, real and personal, and assets, and to conduct, as conservator, the business of said person, or so much thereof as to the commissioner may seem appropriate, and enjoining said person and its officers, directors, agents, servants, and employees from the transaction of its business or disposition of its property until the further order of said court:

(a) That such person has refused to submit its books, papers, accounts, or affairs to the reasonable inspection of the commissioner or his or her deputy or examiner.

(b) That such person has neglected or refused to observe an order of the commissioner to make good within the time prescribed by law any deficiency in its capital if it is a stock corporation, or in its reserve if it is a mutual insurer.

(c) That such person, without first obtaining the consent in writing of the commissioner, has transferred, or attempted to transfer, substantially its entire property or business or, without such consent, has entered into any transaction the effect of which is ~~to merge a merger, consolidate consolidation, or reinsure transfer by assumption reinsurance~~ of substantially its entire property or business in or with the property or business of any other person. *For the purposes of this chapter, "assumption reinsurance" shall mean any contract that does the following:*

*(1) Transfers insurance obligations or risks, or both, of existing or in-force contracts of insurance from a transferring insurer to an assuming insurer.*

*(2) Is intended to effect a novation of the transferred contract of insurance with the result that the assuming insurer becomes directly liable to the policyholders of the transferring insurer and the transferring insurer's insurance obligations or risks, or both, under the contracts are extinguished.*

1 (d) That such person is found, after an examination, to be in  
2 such condition that its further transaction of business will be  
3 hazardous to its policyholders, or creditors, or to the public.

4 (e) That such person has violated its charter or any law of the  
5 state.

6 (f) That any officer of such person refuses to be examined  
7 under oath, touching its affairs.

8 (g) That any officer or attorney in fact of such person has  
9 embezzled, sequestered, or wrongfully diverted any of the assets  
10 of such person.

11 (h) That a domestic insurer does not comply with the  
12 requirements for the issuance to it of a certificate of authority, or  
13 that its certificate of authority has been revoked; or

14 (i) That the last report of examination of any person to whom  
15 the provisions of this article apply shows such person to be  
16 insolvent within the meaning of Article 13 (commencing with  
17 Section 980), Chapter 1, Part 2, Division 1; or if a reciprocal or  
18 interinsurance exchange, within the applicable provisions of  
19 Section 1370.2, 1370.4, 1371, or 1372; or if a life insurer, within  
20 the applicable provisions of Sections 10510 and 10511.

21  
22  
23 **All matter omitted in this version of the bill**  
24 **appears in the bill as introduced in**  
25 **Assembly, February 23, 2006 (JR11)**  
26